

Exhibit B

Confirmation Hr'g Tr.

In re Number Holdings, Inc., No. 24-10719 (JKS) (Bankr. D. Del. Jan. 24, 2025)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 24-10719 (JKS)
NUMBER HOLDINGS, INC.,
et al., (Jointly Administered)
Courtroom No. 3
824 North Market Street
Wilmington, Delaware 19801
Debtors.
Friday, January 24, 2025
10:00 a.m.

TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 (Proceedings commenced at 10:03 a.m.)

2 THE COURT: Please be seated. This is Judge
3 Stickles. We are on the record in Number Holdings, Case No.
4 24-10719.

5 Good morning, Ms. Doyle.

6 MS. DOYLE: Good morning, Your Honor. For the
7 record Lauren Doyle of Milbank LLP counsel to the debtors, 99
8 Cents.

9 I believe that there are only two matters
10 remaining on today's agenda; that is Docket No. 23, which is
11 -- I'm sorry, Agenda Item No. 23, which is an objection to a
12 motion for payment of administrative claim, and the main
13 event, final approval of the debtors disclosure statement and
14 confirmation of the debtors Chapter 11 plan. If it's okay
15 with the Court, we would like to take the confirmation of the
16 plan first and then move to the motion for payment of
17 administrative claim.

18 I am joined by my partner, Brian Kinney, on Zoom,
19 who, if the Court will indulge us in appearance on Zoom, will
20 be responsible for responding to any remaining objections to
21 confirmation of the plan at the appropriate time. And my
22 colleague, Tuvia Peretz, who is here in the courtroom to walk
23 the Court through the recent changes to the plan and the
24 proposed confirmation order and address the claims objection.

25 Your Honor, I had the pleasure of standing here

1 before you on this case the very first day seeking approval
2 of critical first day relief and now, as we are here today,
3 seeking confirmation of a Chapter 11 plan. Admittedly, when
4 we stood here in mid-April of last year, just after the
5 company had made an extremely difficult determination to
6 close all 371 of its retail locations, to commence going out
7 of business sales, and to let their employees know that 99
8 Cents would be shutting down in a matter of one to two months
9 we did not know whether confirmation of a Chapter 11 plan
10 would, in fact, happen.

11 But those of us who stood here before you, counsel
12 for the company, Milbank and Morris Nichols, the company's
13 chief restructuring officer and financial advisors, Chris
14 Wells and the Alvarez & Marsal team who are here in the
15 courtroom today, the company's investment banker, Jefferies,
16 and the company's real estate advisors, Hilco, all believed
17 that a Chapter 11 plan was possible and embarked on a process
18 to achieve that goal. In just two months the company
19 successfully sold over 350 leases, owned property and other
20 assets including merchandise, FF&E, and intellectual property
21 generating over \$300 million in value of sale proceeds.

22 The debtors were able to successfully pay off the
23 DIP in full and their prepetition ABL financing. That left
24 two key tasks for the company. First, to resolve disputes
25 between the debtors, the secured noteholders and the

1 creditors committee with respect to potential challenges to
2 their liens and the allocation of sale proceeds. As Your
3 Honor is aware, we successfully reached a settlement with
4 those parties back in November. That settlement is the
5 underpinning from this plan and it ensures that there will be
6 value remaining for unsecured creditors after satisfaction of
7 the prepetition secured notes and payment of administrative
8 and priority claims.

9 Second, the company, led by its board of directors
10 and its CRO, Chris Wells, engaged in a process, which I have
11 not seen before, to manage liabilities, recover assets, and
12 reconcile and resolve over 650 proofs of claim resulting in a
13 reduction of over 635 million in liabilities asserted against
14 the estates. In so doing, this company has managed sales
15 that fell through, resolved landlord objections, sub-rent,
16 503(b)(9) and administrative priority claims, and addressed
17 numerous motions seeking to lift the automatic stay to
18 prosecute slip and fall claims.

19 This -- these critical and time consuming tasks
20 paved the path for us to be standing here today. In light of
21 all this the debtors are now ready to make distributions to
22 holders of allowed administrative and priority claims and
23 turn over the remaining assets to a liquidating trust to
24 further recover value, reduce claims and make distributions
25 to unsecured creditors. While the shutdown of a retail

1 service that served primarily low-income communities and the
2 loss of over 10,000 jobs could never be called a success,
3 these Chapter 11 cases and the fact that we are seeking
4 confirmation of this Chapter 11 plan is, in fact, a
5 successful outcome.

6 With that, I will proceed with the debtors case in
7 chief for confirmation of the plan. Before I dive in, I want
8 to just walk through briefly the documents that have been
9 filed in support of the plan. The disclosure statement was
10 filed back in November at Docket No. 1534 and the
11 solicitation version of the disclosure statement and plan are
12 filed at Docket No. 1613. A revised version of the plan was
13 filed earlier this week at Docket No. 1685 as well as an
14 amended plan supplement at Docket No. 1686. The proposed
15 form of confirmation order was filed at Docket No. 1689. And
16 a further amended plan was filed last night at Docket No.
17 1720. And an amended form of confirmation order was filed at
18 Docket No. 1721.

19 In terms of confirmation declarations, the voting
20 declaration was filed at Docket No. 1685. The declarant,
21 Craig Johnson of Kroll Restructuring Administration LLC, is
22 here in the courtroom and available for cross-examination
23 Your Honor, at this time I respectfully request that we move
24 his voting declaration at Docket No. 1685 into evidence.

25 THE COURT: Does anyone object to the admission

1 into evidence of the Johnson voting declaration?

2 (No verbal response)

3 THE COURT: Okay, I hear no one. Its admitted.

4 (Johnson voting declaration received into evidence)

5 THE COURT: Does anyone expect to cross-examine
6 Mr. Johnson regarding the content of his declaration?

7 (No verbal response)

8 THE COURT: Okay, hearing no one its admitted and
9 uncontroverted.

10 MS. DOYLE: Thank you, Your Honor.

11 The next declaration filed in support of
12 confirmation is the Wells declaration filed at Docket No.
13 1687. The CRO, Chris Wells, is also in the courtroom today,
14 as I mentioned, and available for cross-examination. Your
15 Honor, at this time I would request that we move the Wells
16 declaration into evidence.

17 THE COURT: Does anyone object to the admission of
18 the declaration of Christopher J. Wells, the debtors CRO, in
19 support of confirmation at Docket No. 1687?

20 (No verbal response)

21 THE COURT: I hear no one. Does anyone anticipate
22 cross-examining Mr. Wells regarding the contents of his
23 declaration?

24 (No verbal response)

25 THE COURT: Okay, hearing none that declaration is

1 admitted without contradiction.

2 (Wells declaration received into evidence)

3 MS. DOYLE: Thank you, Your Honor.

4 I also want to note that we filed the confirmation
5 brief that summarizes the basis for confirmation of this plan
6 and the replies in support of confirmation and to the U.S.
7 Trustees objection. That was filed at Docket No. 1688 and we
8 will rely primarily on the arguments set forth in that brief.
9 But briefly we want to highlight a few key points regarding
10 the disclosure statement and the plan.

11 In particular, we would like to note that approval
12 of the disclosure statement on a final basis is uncontested.
13 By entering the interim approval and procedures order Your
14 Honor has already determined that the disclosures statement
15 contained adequate information within the meaning of Section
16 1125 of the Bankruptcy Code for purposes of soliciting the
17 plan. The disclosure statement contains, among other things,
18 information about the plan, an overview of the debtors
19 corporate history, business, capital structure, the events
20 leading up to the Chapter 11 cases, key events that occurred
21 during these cases, risk factors related to the plan, the tax
22 law consequences and a liquidation analysis.

23 In accordance with the interim approval and
24 procedures order, the debtors solicited votes on the plan
25 from holders of claims in the voting classes, Class 4, the

1 senior secured notes claims, and Class 5, general unsecured
2 claims, and published notice of confirmation of the plan in
3 the Los Angeles Times. The debtors received no objections to
4 final approval of the disclosure statement.

5 With that, Your Honor, I will turn to confirmation
6 of the plan. The plan provides for the deemed consolidation
7 of the debtors for purposes of plan and distributions.
8 Accordingly, the vesting of all -- the majority of all of the
9 debtors remaining assets, and claims, and causes of action
10 other than those that were released pursuant to the plan into
11 a liquidating trust for the benefit of the debtors general
12 unsecured creditors and for which META Advisors will serve as
13 the liquidating trustee.

14 Notwithstanding the U.S. Trustees objection to
15 confirmation, which we will address shortly, the debtors
16 submit that the record is clear that the plan should be
17 confirmed as it meets all of the requirements of Section 1129
18 and has the overwhelming support of all classes of creditors
19 entitled to vote on the plan. In particular, as set forth in
20 the voting declaration, the plan has the support of 100
21 percent in number of holders in amount of claims in Class 4
22 senior notes claims that voted on the plan and 91 percent in
23 number of holders and 83 percent in amount of claims in Class
24 5 general unsecured claims that voted on the plan.

25 In addition, the plan is supported by the ad hoc

1 group of noteholders and the creditors committee. In fact,
2 the debtors were able to successfully negotiate resolutions
3 of all objections or concerns raised by any creditor
4 constituency or party in interest other than those of the
5 United States Trustee. Accordingly, we would submit the plan
6 satisfies the requirements of Section 1129(a)(8) and 1129(b)
7 of the Bankruptcy Code. In addition, as set forth in the
8 liquidation analysis, no creditor would do better in a
9 Chapter 7 liquidation than they will do under this plan.

10 The confirmation brief that we submitted
11 summarizes the reasons why the plan satisfies the other
12 subsections of 1129 of the Bankruptcy Code and related
13 requirements. And rather than walk through each one of those
14 requirements, I would rather we just move onto the contested
15 portion of the confirmation hearing.

16 As set forth in our confirmation brief, we
17 received objections and reservations of rights from Safety
18 National Corporation, certain personal injury claimants, the
19 United States Attorney's Office for the District of Delaware,
20 former landlords, the Texas Taxing Authorities, certain
21 creditors and Wilmington Trust National Association as
22 indenture trustee for the secured noteholders. All of those
23 objections and responses have been resolved through proposed
24 modifications to the language in the plan or the proposed
25 confirmation order. The only remaining outstanding objection

1 is the objection of the United States Trustee filed at Docket
2 1679.

3 Before I turn the podium over to Ms. Sierra-Fox to
4 address the U.S. Trustees objections, we wanted to note that
5 we understand that the revised language on payment of
6 statutory fees that is included in the revised version of the
7 plan filed last night resolves the U.S. Trustees objection
8 with respect to that issue. That leaves four remaining
9 issues raised in the U.S. Trustees objection that all,
10 effectively, can be rolled up into the U.S. Trustees rehashed
11 objection to the plan's narrowly tailored third party release
12 opt-out structure that this Court already approved at the
13 prior hearing and upon which the debtors relied and solicited
14 votes.

15 Notably, the opt-out mechanics approved effective
16 and the consent of creditors can be determined based on the
17 facts that many creditors chose to opt-out of the releases as
18 set forth in the Johnson declaration. I also want to note
19 that as set forth in our confirmation brief, the debtors do
20 need the waiver of the stay provided for in Rules 3020(e) as
21 the debtors fiscal year ends on January 31st, 2025 which is
22 just one week from today. The debtors must close their books
23 before that date. Failure for the plan to go effective by
24 such date will cause unnecessary negative financial and tax
25 consequences to the debtors that will only harm stakeholders.

1 With that, Your Honor, we will reserve on our
2 responses to the U.S. Trustees objections and turn the podium
3 over to Ms. Sierra-Fox.

4 THE COURT: Thank you.

5 MS. SIERRA-FOX: Good morning, Your Honor. Rosa
6 Sierra-Fox on behalf of the U.S. Trustee.

7 Your Honor, we have resolved the issue in our
8 objection with respect to statutory fees. So, we agree with
9 the debtors characterization of the remaining issues in,
10 effectively, that they are part and parcel of the larger
11 objection to the non-consensual releases by opt-out.

12 Your Honor, you heard me at the disclosure
13 statement stage and I'm not sure that the argument is much
14 different now, and we have briefed the issue extensively on
15 our papers. That is the argument which we will largely rely
16 on today. Notwithstanding the ruling at the disclosure
17 statement stage, we continue to believe -- the U.S. Trustee
18 continues to believe that a release -- a third-party release
19 by opt-out is a non-consensual release and that that issue is
20 measured by state law and that under state law silence does
21 not constitute acceptance to an offer and it's the same issue
22 here. Effectively, a release by opt-out is asking parties
23 to, who otherwise are silent, be bound to a third-party
24 release.

25 Relatedly, on the issue of the injunction we had

1 also raised this at the disclosure statement stage but I am
2 not sure that we got into it at that stage but if there is no
3 authority under the code or under the state law to grant a
4 non-consensual release then we don't think an injunction
5 enforcing that release is authorized by the bankruptcy code
6 or otherwise.

7 Third, the plan contains a provision that treats
8 the plan as a global settlement largely for the reasons we
9 stated in our object, which I will summarize to be that the
10 plan is not governed by settlement standards and the GUC plan
11 is not a Rule 9019 settlement. We think that provision tends
12 to conflate what the actual confirmation standard here is.
13 And we don't think as drafted is appropriate. We do think if
14 it were limited to just refer to the parties that have
15 explicitly agreed to a release we would be fine with a
16 construct like that and have agreed to that in other cases.

17 Lastly, I think this is for purposes of doing our
18 duty to preserve the record for appeal, we object to the
19 shortening of the 14 day stay. The proposal to shorten the 14
20 day stay as that is in Rule -- Federal Rule of Bankruptcy
21 Procedure 3020. The debtors have since voiced why they need
22 that waiver. We will let Your Honor decide if that presents
23 such exigent circumstances as to impose a waiver of the stay
24 but we think that issue -- a lot of debtors might face that
25 issue and its not necessarily what the rule contemplates in

1 terms of exigencies.

2 Your Honor, unless the Court has any other
3 questions for me we would, like I said, largely rely on the
4 arguments we have already had and the discussions we have
5 already had on largely the issue here of the non-consensual
6 releases.

7 THE COURT: I appreciate the thorough briefing.
8 With respect to the stay I am curious about that issue in
9 light of the fact that there are no pending objections to
10 confirmation. What is the U.S. Trustees position? Does the
11 U.S. Trustee intend to appeal?

12 MS. SIERRA-FOX: Your Honor, I don't have an
13 answer on that -- from the U.S. Trustees perspective. That
14 will be --

15 THE COURT: Is this a policy argument, I guess, is
16 what I am driving at?

17 MS. SIERRA-FOX: You certainly -- this -- we do
18 think this is necessary to raise in light of our position on
19 the release issues.

20 THE COURT: Thank you.

21 MS. SIERRA-FOX: Thank you.

22 THE COURT: Does anyone else have any objections
23 to the plan and want to be heard? I will hear from the
24 debtor, or the committee, or anyone else who wants to be
25 heard.

1 MR. ROBINSON: I apologize, Your Honor. I should
2 have got up before the objection. Your Honor, Colin
3 Robinson, Pachulski Stang Ziehl & Jones, on behalf of the
4 committee. My colleague, Shirley Cho, is joining us from
5 California on Zoom. Our co-counsel from Kelley Drye are also
6 on.

7 Your Honor, obviously, we support the plan. I just
8 wanted to thank all the parties. There was a lot of work to
9 get here today, especially in the last two weeks. We worked
10 hard with Ms. Sierra-Fox to resolve our open issues. The
11 statutory fee one was one that took a lot of time and a lot
12 of calls and a lot of meetings but we were happy to get there
13 on language that worked for both sides.

14 I wanted to thank the debtors professionals.
15 Communication lines have been great throughout and that is
16 how we were able to get here today which we think is the best
17 result in, as usual, not a great situation but we are happy
18 to move on and get the liquidating trust up and running.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Ms. Doyle.

22 MS. DOYLE: Your Honor, I believe Mr. Kinney was
23 going to address some of the arguments made by Ms. Sierra-Fox
24 but his line was muted.

25 Are you able to hear us?

1 MR. KINNEY: Your Honor, are you able to hear me?

2 THE COURT: Yes, I can hear you.

3 MR. KINNEY: Thank you, Your Honor. Brian Kinney
4 of Milbank LLP on behalf of the debtors.

5 Yes, if Your Honor would indulge me, I would just
6 like to respond to the issues raised by Ms. Sierra-Fox with
7 respect to the releases.

8 THE COURT: Okay.

9 MR. KINNEY: Your Honor, as we argued at the
10 disclosure statement hearing and based on Your Honor's input
11 as well into the form of the opt-out release that was put on
12 the ballot, this opt-out release was, in fact, very limited.
13 It only applied to parties who affirmatively made the
14 decision to submit a ballot to the debtors. No party is
15 grudging over a release on the basis of their status as a
16 claim holder unless they, in fact, submitted a ballot to the
17 debtors and did not check the opt-out box.

18 The opt-out box was extremely prominent and
19 conspicuous on the ballots, whether a party used an
20 electronic ballot or the paper ballot. We believe that is
21 evidenced by the number of parties who elected to, in fact,
22 use that opt-out election. The voting report demonstrates
23 the number of parties who, in fact, did avail themselves of
24 that opt-out.

25 So, Your Honor, based on that we believe that this

1 is, in fact, consensual and we believe that it is, as
2 demonstrated in our brief in support of confirmation,
3 permissible under both state and federal law as we believe is
4 the appropriate standard but we believe under either standard
5 the limited and very targeted opt-out here would satisfy any
6 standard that, in fact, does exist.

7 THE COURT: What about the U.S. Trustees position
8 with respect to the injunction language?

9 MR. KINNEY: Your Honor, the injunction language
10 tracks -- does not extend beyond the parties who have, in
11 fact, granted the release. It only applies to the parties
12 who have granted that release. It does not pick up other
13 parties. So, in fact, the two issues are tied together. To
14 the extent that the release is appropriate and permissible
15 the injunction language extends no further then that release.
16 So, the two really do go hand in hand and it is -- the
17 injunction does not seek to enjoin anyone who has not, in
18 fact, granted a release with respect to a third party.
19 Obviously, it does with respect to -- you know, it does seek
20 to enforce the plan generally as well but it does not extend
21 to releases beyond the parties who have granted the third-
22 party release.

23 THE COURT: Thank you. Do you want to address the
24 U.S. Trustees other issue?

25 MR. KINNEY: Certainly, Your Honor. With respect

1 to the 9019 standard, Your Honor, we do not believe that the
2 inclusion of the provision stating that this is a global --
3 the plan constitutes a global settlement, in fact, changes
4 the standard for approval of the plan under Section 1129 of
5 the Bankruptcy Code. As we briefed, as we have demonstrated
6 through the evidence that we have submitted today, we believe
7 that we have, in fact, satisfied Section 1129 without
8 consideration of the 9019 standards.

9 However, we also believe that deeming the plan is
10 also appropriate given the fact that it does, in fact,
11 incorporate the global settlement reached with the creditors
12 committee, the secured noteholders as well as have other
13 provisions relating to, for example, the release of
14 preference claims and related items. So, we believe that
15 given those items it is appropriate to consider the plan and
16 global settlement; however, we believe that we have met the
17 confirmation standards about needing to rely on 9019
18 specifically for any one of those elements.

19 Your Honor, with respect to the waiver of the
20 stay. We believe that the -- we do believe that the
21 circumstances here are the type of exigent circumstances that
22 do allow the waiver of the stay. There are significant -- as
23 demonstrated in Mr. Wells's declaration, there are
24 significant financial and tax consequences if the plan does
25 not go effective before the end of the debtors fiscal year at

1 the end of January. Given those negative effects that will
2 directly deplete the available recoveries for the unsecured
3 creditors who are the beneficiaries of this plan of the trust
4 being established, we believe that that is the very type of
5 harm that can be solved by waiver of the stay provided by the
6 rules.

7 THE COURT: Okay, so it's the debtors intent to go
8 effective within the next seven days.

9 MR. KINNEY: That is correct, Your Honor. Our
10 intent is to go effective at the end of next week.

11 THE COURT: Okay. I want to revisit the
12 settlement issue because I will -- I do find that there has
13 been a movement away from this type of language in
14 confirmation orders. Here, the order provides that the
15 settlements reflected in the plan are approved under 9019.
16 Its settlements with a lower case "s". I think that is
17 overly broad. I don't know if you are talking about 527
18 settlements, I don't know if you are talking about the
19 settlement that was with the committee that the Court already
20 approved by a 9019 motion. So, what is meant by this
21 provision

22 MR. KINNEY: Your Honor, from the debtors
23 perspective --

24 THE COURT: I'm trying to put a more fine point on
25 it, Mr. Kinney. Sorry.

1 MR. KINNEY: Yeah -- no, no. Thank you, Your
2 Honor. No, we believe that it's intended to pick up, first
3 of all, that global settlement again to confirm that it has
4 in fact been approved under 9019. It was done by prior court
5 order under that standard. It also does apply, we believe,
6 to the waiver of the preference claims pursuant to the
7 provisions of the plan, as well as other -- the other
8 settlements of claims and causes of action that have been
9 memorialized in the plan.

10 And as Your Honor will see in the various redlines
11 of the plan that we've filed over the last week, we have
12 actually reached a number of resolutions with various parties
13 that are reflected in the revised plan and the revised
14 confirmation order, and we believe that those resolutions
15 also are settlements that are appropriate to approve under
16 Rule 9019.

17 And of course, Your Honor, the last piece is also
18 the propriety of the debtor releases. Again, we also believe
19 that -- while we believe they are appropriately generally and
20 under the standards set forth in 1129 and 1123 of the Code
21 that they also could be considered a settlement and so are
22 also approvable to include that language. Again, it's belt
23 and suspenders more than anything else, Your Honor.

24 THE COURT: Okay. Thank you.

25 Ms. Fox, what's the U.S. Trustee's position on

1 this settlement provision, on this comprehensive settlement
2 under 4(f) of the plan?

3 MS. SIERRA-FOX: Yeah. So, Your Honor, Rosa
4 Sierra-Fox on behalf of the U.S. Trustee. Your Honor, when I
5 guess at the time of filing the objection, the part we -- the
6 provision we were of course signaling was the one in the
7 plan, as opposed to a confirmation order because we didn't
8 have the benefit of that at the time. So -- but, regardless,
9 whether we have a broad settlement provision in the plan or
10 in the confirmation order, our position is generally that
11 language that suggests that under 1123 and/or Rule 9019, the
12 plan is being approved as a settlement, or that certain
13 provisions of the plan are being approved as a settlement is
14 inappropriate. Under 1123, we think any authority to approve
15 a settlement is for claims belonging to the debtors. We
16 think the provision in the debtors' plan about the
17 settlement, the global settlement, goes beyond just claims
18 and causes of action belonging to the debtor. So we don't
19 think that is the statutory draft to approve the plan as a
20 settlement -- provisions of the plan as a settlement.

21 Further, with respect to Rule 9019, that is --
22 we've got case law, the Martin factors, and we've got
23 specific factors that the Court has to consider when
24 approving a settlement that, again, are not implicated
25 necessarily when the Court is considering approval of the

1 plan in general.

2 So, with respect to -- so I think what's become a
3 rather good compromise in certain other cases is to narrow
4 these provisions to say these specific settlements,
5 settlement with party X, party Y, party B, whoever those
6 parties might be, are being approved under this plan under
7 Rule 9019, on the assumption that the debtors have made the
8 case in connection with confirmation that the settlement
9 meets the Martin factors or those relevant factual -- the
10 relevant factual analysis that would be -- this Court would
11 need to consider under Rule 9019.

12 We have no issue with that and that's what we
13 think this should be limited to. The U.S. Trustee's position
14 is that when this goes beyond approving those specific
15 settlements and is read largely as a provision that says the
16 plan is being approved as a settlement, we are getting into
17 territory where the confirmation standard is being conflated
18 and, in particular, with respect to calling the releases a
19 settlement -- I mean, not to go back to the point about the
20 consensual nature of the releases, but I don't think that's
21 necessarily what the -- I think, if the debtors thought about
22 that again, that's not necessarily what they want the
23 releases to be considered as because they're getting into the
24 state law territory and those things that precisely is the
25 reason why we think this need a higher level of consent, or

1 at least what we call affirmative consent by opt-ins.

2 So our --

3 THE COURT: I have issues with paragraph (dd) as
4 well in the form of order with respect to third party
5 releases.

6 MS. SIERRA-FOX: Yes.

7 THE COURT: Candidly, these are the two concerns I
8 have. I think that the provision with respect to settlements
9 is too broad. I have no issue with the settlements the Court
10 previously approved, the wrapping of the 527 into here, and
11 other settlements that are part of the confirmation and
12 order. As written, this is just too broad.

13 MS. SIERRA-FOX: Okay. Thank you, Your Honor.

14 MR. KINNEY: Your Honor, we have no issue
15 narrowing that. And, again, we also do think -- and just to
16 clarify, we would never think the third party releases were
17 subject to the 9019 settlement standard. We were saying that
18 the granting of the debtor releases and the decision to
19 release the preference claims, but --

20 THE COURT: So can the parties tighten that
21 language?

22 MS. SIERRA-FOX: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. KINNEY: Yes.

25 THE COURT: Are there any other issues with

1 respect to the plan, or does anybody want to be heard on
2 final approval of the disclosure statement, solicitation,
3 confirmation? This is your opportunity.

4 Okay, otherwise, I'm prepared to rule on the
5 confirmation.

6 So, based upon my review of the record in this
7 case, the evidence, and arguments presented in support of
8 confirmation, I find the plan satisfies the requirements of
9 the Bankruptcy Code, and will approve the disclosure
10 statement on a final basis and confirm the plan.

11 In terms of meeting the standards for final
12 approval of the disclosure statement and confirmation, the
13 debtors have admitted into evidence the uncontroverted
14 declaration of Christopher J. Wells in support of
15 confirmation at Docket 1687, and the declaration of Craig
16 Johnson of Kroll Restructuring Administration in support of
17 solicitation and tabulation of ballots at Docket 1684.

18 As I noted, those declarations are uncontroverted
19 and support confirmation of the plan.

20 The debtors also filed a comprehensive memorandum
21 of law in support of confirmation at Docket 1688 and, while
22 that memorandum is not evidence, it is part of the record,
23 and the memorandum lays out with specificity how the debtors
24 have satisfied their various statutory burdens and
25 requirements.

1 With respect to solicitation, the voting
2 declaration demonstrates the debtors have satisfied the
3 provisions of Section 1125 and 1126 of the Bankruptcy Code,
4 as applicable. The declaration shows that the plan has the
5 support of Classes 4 and 5, both voting classes.

6 With respect to approval of the disclosure
7 statement, I'm satisfied the debtors have carried their
8 burden. The disclosure statement satisfies the disclosure
9 requirements by providing adequate information, as defined in
10 Section 1125(a). Further, there have been no objections of
11 receipt with respect to final approval of the disclosure
12 statement. So I will approve it on a final basis.

13 With respect to confirmation, the debtors have
14 satisfied their burden with respect to the requirements of
15 Section 1129 of the Bankruptcy Code. Importantly, this plan
16 is a culmination of the debtors' negotiation with key
17 stakeholders in this case.

18 So I won't address each standard, but I will note
19 no one has challenged good faith, no one has challenged
20 classification or treatment, the plan satisfies the best
21 interests test and the requirements of Section 1129(a)(7).
22 The liquidation analysis demonstrates that confirmation of
23 the plan will provide creditors with a recovery that's not
24 less than the amount such holders would receive under Chapter
25 7 liquidation.

1 The plan provides for an orderly wind-down and
2 liquidation of the debtors' estates, thereby satisfying the
3 feasibility requirement of Section 1129(a)(11). The
4 exculpation provision set forth in the plan complies with
5 applicable law.

6 With respect to the releases, the debtors'
7 releases are appropriate and meet the standard for debtor
8 releases in this circuit. And I have previously stated, in
9 light of Purdue with respect to third party releases, there
10 is no prohibition for use of an opt-out release, but whether
11 an opt-out is appropriate is subject to a case-by-case
12 analysis. And I find the opt-out here under the
13 circumstances of this case, for the reasons that I stated on
14 the record at the disclosure statement hearing, to be
15 appropriate. The third party releases are consensual, so I
16 will overrule the United States Trustee's objection. And I
17 also will overrule the United States Trustee's objection with
18 respect to the injunction argument, as the injunction being
19 consistent with the release provisions. I see that as a
20 belt-and-suspenders, so to speak.

21 Lastly, with respect to a stay of the confirmation
22 order, in light of the arguments presented and the Wells
23 declaration, I find cause exists to waive the stay of the
24 confirmation order. So the order will be effective
25 immediately upon its entry.

1 With respect to the form of order, paragraph (dd)
2 -- and this goes to the third party releases -- I find these
3 releases are consensual. The findings in sentence 3 to the
4 end of the paragraph, they're overly broad, they're
5 unnecessary because these are consensual third party
6 releases, and they're not supported by the evidence
7 presented. So I ask that the language after the second
8 sentence be deleted.

9 With paragraph 30 and 32 -- and this is just a
10 question -- these are newly -- new provisions, and I assume
11 this has something to do with just being able to receive
12 distributions prior to cancelation, is that correct?

13 MR. PERETZ: Yes, Your Honor, this was -- for the
14 record, Tuvia Peretz, Milbank LLP, on behalf of the debtors.
15 This language actually sort of caught up the confirmation
16 order to the plan. So these are changes made in the plan at
17 the request of the Trustee that then made their way into the
18 final version of the confirmation order last night.

19 THE COURT: Okay. As I read it, it was actually a
20 simplified process going forward, as to how it reads, is that
21 accurate?

22 MR. PERETZ: Yeah --

23 THE COURT: Okay.

24 MR. PERETZ: -- it clarifies, so -- yeah.

25 THE COURT: Okay.

1 MR. PERETZ: And, you know, we'd also be happy, if
2 you have any questions, I know there was another new
3 paragraph in the confirmation order in paragraph 49, which
4 that's a settlement agreed to with Dollar Tree with respect
5 to -- as you might remember, they previously -- there were
6 two asset purchase agreements for designation rights, there
7 were reimbursement obligations under those, and so this
8 resolves all of those reimbursement obligations, and was
9 finalized last night and added into the form of order.

10 THE COURT: Okay. Thank you.

11 MR. ROBINSON: And, Your Honor, just for the
12 record, the committee had no objection to that resolution and
13 --

14 THE COURT: Okay. And I have no issue with it
15 being incorporated into this order and I'm happy the parties
16 are going to resolve that.

17 With respect to paragraph 33, I'm curious why this
18 is 14 days and not 21, as required by the local rules.

19 MS. DOYLE: Your Honor, I believe you're referring
20 to the closing of the Chapter 11 cases --

21 THE COURT: Right.

22 MS. DOYLE: -- which I think it's now in the
23 latest filing, paragraph 34.

24 THE COURT: Oh.

25 MS. DOYLE: I believe I recall that this was a

1 negotiated resolution with Ms. Sierra-Fox, but I could be
2 wrong, and please correct me if I'm wrong. I believe at one
3 point we had wanted to seek to close some of the cases
4 immediately upon the effective date, and I believe that this
5 was a resolution to close them upon motion, but upon 14-days
6 notice. But I was not party to those discussions, so --

7 MS. SIERRA-FOX: Your Honor, Rosa Sierra-Fox on
8 behalf of the U.S. Trustee. Debtors' counsel is correct,
9 they did have -- their original language proposed immediate
10 closure without motion --

11 THE COURT: Oh.

12 MS. SIERRA-FOX: -- and that certainly was an
13 issue. I can't say that I focused on the 14 days, that's
14 something that I overlooked. So I'm not sure -- 14 days is
15 better than zero, rather than automatic closures, so I guess
16 I was fine with that, but not in -- I don't want the Court to
17 think that I -- that the 14 days was something we proposed
18 necessarily, it's just --

19 THE COURT: Okay, I understand.

20 MS. SIERRA-FOX: -- it was better than where we
21 first stood.

22 THE COURT: I understand.

23 MS. SIERRA-FOX: Yeah.

24 THE COURT: Okay. What does -- does the U.S.
25 Trustee have any issue with 14 days?

1 MS. SIERRA-FOX: No, Your Honor. I mean, in light
2 of where --

3 THE COURT: A negotiated resolution.

4 MS. SIERRA-FOX: -- where I was -- where we were
5 at first, this is -- I'll take the 14 days.

6 THE COURT: Okay. Paragraph -- sorry, a couple of
7 my numbers changed because I looked at this last evening.
8 Bear with me one second.

9 MR. PERETZ: And we also have redlines of what was
10 filed late last night --

11 THE COURT: That's okay, I have it. I just was
12 looking at my notes from last night, it was a different copy.

13 So paragraph -- what is now paragraph 45, it deals
14 with recording officers, and it says recording officers are
15 directed, directed should be authorized.

16 And I had comment with respect to paragraph 46,
17 but if you amend the phraseology in the plan consistent with
18 the language we normally see, I have no modification to the
19 form of order.

20 And then this is just a clarification. Let me
21 make sure the paragraph numbers are the same.

22 Okay, this is now -- this is paragraph 53, this is
23 the notice of confirmation order. So this paragraph states
24 the notice of confirmation is adequate under the
25 circumstances. I don't know what notice of confirm -- it's

1 not a defined term, I don't know what this is. Is this like
2 a notice of effective date, or are you going to send out a
3 notice that the plan is being confirmed, but I don't know
4 what it is and I can't comment that it's adequate because I
5 haven't seen it.

6 MS. DOYLE: Your Honor, you are a hundred percent
7 right. I believe that it was intended to be an exhibit to
8 the confirmation order, what you see in many cases, which is
9 why --

10 THE COURT: Right.

11 MS. DOYLE: -- this language I think was a
12 holdover in here. Obviously, when we -- we could do one of
13 two things. We could attach a notice when we submit it to
14 the Court and the Court can make that finding separately upon
15 receipt of that notice, or we could strike the language.

16 THE COURT: Yeah, you could just strike that
17 sentence because -- I mean, I'm happy to do it either way,
18 but I just want to make sure I wasn't missing something.

19 MS. DOYLE: Your Honor, I think our preference
20 certainly would be to submit it under certification. As you
21 know, those forms are pretty standard and we would keep the
22 standard form, but this way we have, once it is sent out and
23 served that we have comfort, but it is approved.

24 THE COURT: That's fine. Do you anticipate
25 getting an order to the Court today?

1 (Pause)

2 MS. DOYLE: Your Honor, after much conferring, we
3 were actually discussing Your Honor's schedule for today,
4 which so long as Your Honor has opportunity later in the day
5 for us to be able to submit it, it will take us some time to
6 be able to send the notice around to the relevant parties and
7 make sure that everybody is signed off before submission. We
8 would like to still get it on the docket today, if possible,
9 but that of course all depends on Your Honor's schedule and
10 availability.

11 THE COURT: Okay. Well, I actually have a gap in
12 the afternoon where I'm not available, but I can later look
13 at it, but I am sensitive to Court staff availability. So if
14 you could try to get it to me by like 4 o'clock, if that's
15 possible.

16 MS. DOYLE: I believe that should be possible.
17 All the relevant parties are in the courtroom and we should
18 be able to get that circulated around pretty quickly.

19 THE COURT: Okay, that would be great.

20 Does anybody else want to be heard with respect to
21 the form of order?

22 MS. SIERRA-FOX: Your Honor, Rosa Sierra-Fox on
23 behalf of the U.S. Trustee. I just want to make sure and for
24 purposes of -- I'd like to get the order in as well as soon
25 as possible. You have -- as long as -- I think your

1 directive was, as long as we come to some agreement on the
2 settlement provision issue we objected to in the plan, no
3 changes to paragraph 46. Is that correct?

4 THE COURT: That's correct.

5 MS. SIERRA-FOX: Okay. Thank you.

6 THE COURT: Unless you're raising an issue, but I
7 think that the plan -- if it's the standard plan language, it
8 should be acceptable.

9 MS. SIERRA-FOX: Okay.

10 THE COURT: Okay. Well, let me just say, I do
11 want to compliment the parties for working together, for
12 reaching the initial settlement and then this plan today. I
13 also want to thank you for working with the United States
14 Trustee's Office to resolve issues, but this I know had to be
15 a difficult case for the parties. There was a lot of moving
16 parts at the beginning, and so I'll compliment you all on
17 getting here today.

18 So, anyway, is there anything further? The next
19 item.

20 MR. PERETZ: We have one older item on the agenda,
21 yeah, Item Number 23 on the agenda, circling back to claims
22 objections.

23 THE COURT: Right. Let me get my other binder.
24 Bear with me one second. This is the 48,000 sprinkler issue?

25 MR. PERETZ: Correct. Sprinkler, yes.

1 THE COURT: Okay.

2 MR. PERETZ: So this is Item Number 23 and the
3 debtors' third omnibus claims objection. We're talking about
4 specifically sub-bullet 3, which is the Clairemont Rental
5 Properties objection -- response to the claims objection.

6 The claims objection was originally filed on
7 August 23rd at Docket Number 1200, asserting that this claims
8 was satisfied or waived as a result of the cure payments made
9 in connection with assumption and assignment of the lease.

10 Clairemont then filed a response to the claims
11 objection on September 13th at Docket Number 1258. An order
12 has been entered sustaining the objections on other claims in
13 the claims objection, leaving out this one remaining
14 component.

15 So, taking a step back, the debtors assumed and
16 assigned this lease to Dollar Tree. That notice of
17 assumption was filed on June 20th at Docket Number 856 and
18 included a cure amount of \$18,685.96, which was --

19 THE COURT: I'm sorry, can you slow down a minute.

20 MR. PERETZ: Yeah.

21 THE COURT: When was it assumed and assigned, what
22 date?

23 MR. PERETZ: So the ultimate assumption and
24 assignment date was July 8th.

25 THE COURT: Okay.

1 MR. PERETZ: The first notice was on June 20th,
2 and then it was submitted -- no objections were received. It
3 was submitted under COC on July 3rd at Docket Number 936, and
4 then entered at Docket Number 954 on July 8th.

5 And so now, subsequently, Clairemont has asserted,
6 in addition to the cure amounts set forth in that notice, an
7 additional \$48,000 in costs accrued related to the sprinkler
8 system repair right before assignment, between mid-June and
9 July, and that the debtors are responsible for this. The
10 debtors have tried to engage with Clairemont on this, asked
11 for some additional information, but thus far have not been
12 able to resolve and have not heard a response in a little
13 while.

14 Our position on it is relatively simple. We
15 believe the assignment order clearly states that all claims
16 not asserted or waived in connection with payment of the cure
17 amount and entry of the order, you can see this in paragraphs
18 4(b) and 8 of the order that was entered, again, at Docket
19 Number 954. Although the Clairemont response claims that
20 because a notice of cure amounts was provided earlier in the
21 case way back in May in a notice of potential assumption and
22 cure amounts at Docket Number 344, and this claim hadn't
23 arisen yet, they didn't have the opportunity to bring it,
24 that doesn't mesh with the facts here, in our opinion, Your
25 Honor, as they could have raised this in connection with the

1 more definitive notice of assumption that was filed on June
2 20th after they alleged the incident leading to this claim
3 arose, which also included that lower cure amount. They even
4 could have reserved rights in connection with that, if they
5 weren't sure. None of that was done. They just filed a
6 proof of claim with the amounts for the first time on the
7 same day that the assumption was ultimately entered after
8 being filed under COC.

9 We're not sure about the components of this claim
10 and the exact timing because also some of the invoices relate
11 to a larger claim and this is a subsection of that that is
12 alleged occurred prior to the actual assignment. So some of
13 those facts we've tried to reach out, but are a bit unclear.
14 But, irrespective, we believe that the claim was waived by
15 virtue of the payment of the listed cure amount, the entry of
16 the assumption order, and the failure to assert this claim
17 prior.

18 THE COURT: Okay. Well, is Clairemont present?

19 (No verbal response)

20 THE COURT: Did Clairemont get notices of hearing?

21 MR. PERETZ: Yes. So we had previously
22 communicated with Clairemont and pushed it to this hearing
23 and since then, in subsequent communications, we just haven't
24 heard back.

25 THE COURT: All right. Did you communicate, I

1 mean, prior to the agenda being filed?

2 MR. PERETZ: We did, we did prior to the agenda
3 being filed, yes.

4 THE COURT: Well, let me ask, is anyone from
5 Clairemont on Zoom?

6 (No verbal response)

7 THE COURT: So I'm going to put a finer on it, can
8 you tell me when you'll communicate with them that the
9 hearing was today?

10 MR. PERETZ: Our last communication with them, I
11 believe, was about a week ago, just over a week ago, saying,
12 you know, this is set for the hearing on the 24th, we want to
13 try to discuss it in connection with that and communicating
14 that it's on the agenda for that hearing currently.

15 (Pause)

16 MR. PERETZ: That was all part of a discussion in
17 an attempt to resolve it as well, which we had been engaged
18 in for a little while prior to that, but then -- you know, we
19 took notice, obviously, of your previous -- trying to limit
20 the number of matters on for this hearing, and so we were
21 working to resolve claims objections and push as necessary,
22 and that was in an attempt to continue to do that, but having
23 not heard back on that, we felt we should go forward at this
24 time.

25 THE COURT: Well, I'm not seeing anyone here on

1 behalf of Clairemont and hearing no one on Zoom, I'm going to
2 overrule their response and as failure to prosecute, and you
3 can submit a form of order.

4 MR. PERETZ: Okay. Thank you, Your Honor.

5 THE COURT: Anything further?

6 MR. PERETZ: I think that's it --

7 THE COURT: Okay.

8 MR. PERETZ: -- that's all we have.

9 THE COURT: All right. Thank you all. Have a
10 great day. Have a safe trip back to New York, and we stand
11 adjourned.

12 COUNSEL: Thank you, Your Honor.

13 (Proceedings concluded at 10:54 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Tracey J. Williams

January 28, 2025

Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable